

# A.S.B.C.E.

The official Newsletter of the Alabama State Board of Chiropractic Examiners

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## Presidential Message

By Carl E. Nelson, D.C.

It's hard to believe that another quarter has already slipped by, and that by the time you read this we will have started a new fiscal year. If you did not renew your license last month, you are now in the "grace" period and are subject to late fees which will escalate each month till the end of the year at which time your license will "lapse". If that happens, you will be without a license, and you will then be subject to "reinstatement" which is a whole different ballgame. Believe me, you don't want to go there, so if you haven't yet renewed, do it now while it's fresh on your mind.

Also by the time you read this, the qualifying period for the upcoming ASBCE elections will have just expired. Districts 5 and 6 will elect new members to the Board, and all DC's in the state will vote on the newly created seat for a minority member. At our next meeting, the Board will make sure that all the names submitted are "qualified" to serve on the Board (qualifications are listed in the rules). The ballots will be mailed around the end of November and run-off ballots (if necessary) would be mailed around the middle of December. As I mentioned in a previous message earlier this year and at the law seminars, this is one of the few Boards in the entire nation that is elected, so exercise your right to vote when you receive your ballot. On average about half of you vote. Also as has been previously stated, vote for who you think will be fair and unbiased as they interpret and apply the rules and the law, because that's what the position is all about.

I would like to take this opportunity to thank Drs. Gilliam and Ivie for their service to the Board and to the Profession as a whole. Serving on the Board is the proverbial "double edged sword". It's a necessary evil and someone has to do it, but, for the most part, nobody likes the ones that step up to

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the plate to do the job. So again, Paula and Ron, thanks for a job well done, and to those who get elected, congratulations and condolences.

There are a couple of items which have been previously mentioned and need to be updated. By the end of October, the "law" portion of your CE hours should be available on-line. It is currently being "tweaked". Additional information about this is listed under seminars in this newsletter. Law hours will still be available in person at some ASCA and CSA seminars, but not as many as the last two years. Also, at the next meeting we will interview the two finalists relative to the "public education" campaign the Board is going to initiate.

We received permission from the attorney generals' office to engage in a program to "educate" the public about the scope and benefit of Chiropractic care, patients' rights, and the function of the ASBCE. It will be a statewide program, but it will not be an advertising campaign per se, and due to limited budget resources, it won't be high profile. I'm sure that many of you won't be happy with it (nothing new there), but it's a step in the right direction and it's more than we have now.

I also feel the need to clarify an item or two that has been raised during the Q & A periods of the law classes. The Boards' policy relative to ad violations is that if it is the first offense, the doctor or permit holder receives a warning letter or a "letter of concern" with a copy placed in their file. No further action is taken and their name is not listed in the newsletter. A second offense results in formal action.

Please see *Presidential Message* on page 4

## Disciplinary Actions

**Walter Bennett, DC** (Madison, Alabama ) License # 2025 Final order dated August 18, 2006 -- assessing fines \$5,000.00 and cost of \$1,500.00 - guilty of ten counts of violating Code of Alabama (1975) § 34-24-166(b)(16) for advertising in manner which violates Board Rules.

**Richard Rizzuto, DC** (Orange Beach, Alabama) License # 1550 Consent order dated July 29, 2006 -- assessing a fine of \$1,000.00 and cost of \$500.00 - guilty of two counts of violating Code of Alabama (1975) § 34-24-166(b)(16) for advertising in a manner which violates Board Rules.



*The Board must bring actions if there are violations of the Chiropractic Practice Act and Rules.*

FYI - The number of complaints received last year by the Board was down (20) twenty percent.

**Thank you** to the licensees who have taken time to review the Rules and Code in order to maintain a practice within the Law.

## New Rules -

### Please replace the old rules with this copy in your Rules and Regulations

#### RULE 190-X-1.02 Composition and Selection of Board.

(1) Composition and Selection of Board. The Board shall be composed of nine members, eight of which shall be licensed to practice and are currently practicing in Alabama who meet the qualifications set out in Code of Alabama, 1975, 34-24-140, 34-24-141 and one consumer member appointed by the Governor. Members serve staggered four-year terms and continue to serve until a new member is appointed / elected, and qualified. No member shall serve more than two consecutive terms. The Alabama State Board of Chiropractic Examiners shall conduct an annual election according to the terms set out in this rule. When a vacancy occurs, whether by expiration of the term, death, resignation of a member, or other cause, the vacancy shall be filled in the same manner as the original appointments / elections are made.

(2) Candidate qualification. In order to qualify the potential candidate must fulfill the following requirements:

- (A) Be a resident of Alabama who has resided in this State for at least five (5) years;
- (B) Reside in the Congressional district from which they seek election, except for one African American elected from the state at-large;
- (C) Be a graduate of a chartered chiropractic school which required actual attendance in the school as a prerequisite to graduation;
- (D) Be actively licensed in Alabama and currently engaged in the clinical practice of chiropractic and

have been so engaged for at least the five (5) immediately preceding years;

(E) Be of good moral character, with no board convictions in the five (5) years preceding qualification, no prior criminal convictions, and no recent history of drug or alcohol abuse;

(F) Must not be presently on probation relating to the practice of chiropractic in any state including this state; and

(G) Submit a completed qualification form to the Board not less than 20 days prior to the election or within the time stated in the Notice of Election.

(3) Voter qualification. In order to be eligible to vote in a board election you must fulfill the following requirements:

(A) Must reside in the congressional district in which you are voting.

Please see *Rules* on page 5



*Replace the old rules with these rules in your copy of the Rules and Regulations.*

## Upcoming Seminars

### Palmer Institute for Professional Advancement

offers the following **ON-LINE** seminars. For information on any of these seminars contact Sharon Whitney at 1-563-884-5715.

1. "Soft Tissue Care in Chiropractic" 6 hours per session
2. "Case Studies in Chiropractic-The Thoracic Spine I" 9 hours per session
3. "Record keeping and Risk Management" 12 hours per session
4. "Chiropractic Patient" 10 hours per session
5. "Emergent Care of the Injured Individual" 12 hours per session
6. "Nutritional Issues in Chiropractic" 10 hours per session
7. "Core Concepts of Rehabilitation" 6 hours per session
8. "Case Studies in Chiropractic-The Cervical Spine I" 6 hours per session
9. "Special Populations – The Female Patient" 6 hours per session
10. "Chiropractic Care of Peripheral Neuropathies" 12 hours per session
11. "Concepts of a Team Chiropractor" 10 hours per session
12. "Professional Boundaries & Chiropractic Practice" 6 hours per session
13. "Ethical Issues in Chiropractic Practice" 6 hours per session
14. "The Preparticipation Examination" 12 hours per session
15. "The Spine in Sport" 6 hours per session



*6 hours per year of your Continuing Education can now be obtained on line.*

**NOTE: Only 6 of the 18 hours per year may be taken on-line.**

DC Online presents "Alabama Rules and Regulations" with 4 hours available **On Line** beginning 10-1-06 through 9-30-07. For information and registration contact William Moreau, DC at 1-712-269-2507. **(This seminar provides the required hours in Alabama Law.)**

### In Alabama

G A Williams Seminars presents "Differential Diagnosis of Common Complaints w/ Risk Management for 12 hours October 7 & 8, 2006 in Birmingham, Alabama. For information contact Glenn Williams, DC at 1-843-525-0170.

Please see *Seminars* on page 4 for more seminars

## Congratulations to those licensed since July 2006

William D. Bach	of Cleveland, Alabama
Nicole R. Bock	of Madison, Alabama
Lowell W. Bragg	of Birmingham, Alabama
John B. Faulds	of Hampton Cove, Alabama
Jeffrey T. French	of Tuscaloosa, Alabama
Gary D. Hancock	of Rainbow City, Alabama
Charles D. Lecroy	of Foley, Alabama
Leland L. Lemon, II	of Montgomery, Alabama
Adam K. Shafran	of Madison, Alabama

## Advisory Opinion Highlights

The following language (as used in the ad submitted, was prohibited) had to be deleted in recent opinions "If living with pain is crushing you, You can get comprehensive treatment with a qualified chiropractor." "Highly quality chiropractic care," "Why live with back Pain?," "gentle techniques available," "Looking for Pain Relief".

Many times an advertisement may be reworded and language added to make the above acceptable.

When you use a gift certificate you should be clear on what you are giving away.

Please see *Opinions* on page 4

## Presidential Message from Page 1

This means two things: just because you didn't see someone's name in the newsletter doesn't mean that their violation wasn't addressed, and, for those names you do see in the newsletter, it wasn't their first ad violation. The most notable exception to this would be an egregious yellow page ad violation because it can't be changed for an entire year. The rules apply to ALL doctors including Board members. While ads can be sent in anonymously (the ad speaks for itself), if you want to know the final disposition (PC, no PC, etc.), you must identify yourself or we have no way to contact you as to the outcome. Other types of complaints must have an identifiable complainant before it can be considered for PC, and these people are advised as to the disposition of a complaint.

I also feel the need to address once again some of the comments from some of you relative to the "law hours" and the advertising rules. I mentioned in the last newsletter the article from one of the Chiropractic publications that stated that advertising is the number one problem for virtually every State Board in the country. Every state has laws and rules relative to advertising that is false, misleading, deceptive, etc., and they are all very similar. It is true that interpretation may vary somewhat from state to state, but I have talked with board members from several other states and the differences are minor, in spite of what some of you have been told by ad salesmen. All they want to do is sell you an ad. They couldn't care less what happens after you buy it. It is not that difficult to create good ads that are within the rules. We will show examples of some

See *Presidential Message* on page 8

*Opinions* from page 3

When you include expiration dates in your advertisement you must include a year so there is no confusion about the terms of the offer.

You must identify yourself as a chiropractor rather than simply referring to "Dr."

You need to define "first day service" and be specific if all services are for new patients and not for existing patients.

The following disclaimer is not required (see rule

190-X-5-.04(3)(p) for the exact language of the required disclaimer.) "No representation is made that the quality of the Chiropractic Services to be performed are greater than the quality of chiropractic services preformed by other chiropractors."

You should not use language that implies that postgraduate studies are required in order to treat individuals with difficult cases, etc.

The Board issued approximately twenty (20) opinions this quarter reviewing over forty (40) documents.

*Seminars* from page 3Near Alabama

**Southern California University of Health Sciences** presents "Functional Reactivation" for 12 hours on October 21 & 22, 2006 in Atlanta, GA and on November 4 & 5, 2006 in Dallas, Texas. For information contact Melea Fields at 1-562-902-3379.

**Texas Chiropractic College** presents "Anti Aging, Longevity and Vitality" for 12 hours on November 4 & 5, 2006 in Atlanta, Georgia. For information contact Regina Perez at 1-800-533-9822.

**National University** presents "Low Back Stabilization" for 12 hours on November 4 & 5, 2006 in Memphis, Tennessee. For information contact Jonathan Soltys, DC at 1-630-889-6620.

*Rules from page 2*

(B) Must certify to your residency in the congressional district on your completed ballot.

(C) Must have an active Alabama license.

(4) Ballots.

(A) An official ballot will be sent to each qualified voter in the respective district not less than 14 days and not later than 120 days after the deadline for qualification.

(B) In order to be counted it must be received by the Board not later than 14 days after the ballots are mailed.

(C) Each official ballot must be returned in the official envelope in order to be counted.

(D) Only original, official ballots will be counted.

(E) The ballots will be maintained for 6 months by the executive secretary of the Board as public information.

(5) Ballot counting- As soon as possible after the deadline for board reception of ballots, the Executive Secretary will deliver by hand or mail all of the unopened ballots to an independent agency employed by the Board for the purpose of tabulating the votes and declaring a majority winner. Unless there is only one candidate for the board and in this situation, the board shall certify the results and the results of the election shall be certified by no less than three members of the board. The candidate with a simple

majority of the votes cast in each respective congressional district shall be declared the winner. In the event that no majority is gained by a candidate, ballots will be sent out within 14 days of the completion of the ballot tabulation and a run-off election between the two largest vote recipients will be held.

Immediately upon being declared the winner, the majority vote recipient will take possession of the expired position on the Board.

Effective: 3-6-90, amended 8/96, amended 1/97, (1), (2)(D), (3)(C), (5) amended 8/2003; (1)(2)(B)(D)(F)(G) amended 6/06

Authority: 34-24-140; 34-24-141; 34-24-144; 34-24-165

**RULE 190-X-1-.03 General Description of Organization and Operation.**

The Board is an independent agency of the State of Alabama. All costs of operating the Board, including administrative, legal, secretarial, clerical and investigative, are paid from legislative appropriation of fees collected by the Board. Any fee which is received by the board shall not be refunded. The attorney general and his assistants may also provide legal services to the Board.

Effective: 9/15/82, amended 1/2000; amended 6/06

Authority: 34-24-143; 34-24-144; 34-24-165

Please see *Rules* on page 6

## Massage Therapy licensure for Establishments

In the course of reviewing advertisements for advisory opinions the following came to the attention of the Board:

Pursuant to the Massage Therapy Act an establishment (office) not owned by a massage therapist which provides massage therapy must be licensed or must obtain an exemption.

An exemption can be obtained by a chiropractor who owns a clinic if the clinic offers massage therapy but the therapy is not the primary function of the office.

In order to obtain the exemption, the chiropractor needs to submit a sworn (notarized) statement (letter), asking for the exemption to the establishment license. The letter should state the primary function of the office is not massage therapy. This letter should be mailed to the Massage Therapy Board.

**This is not a new law but the Massage Therapy Board is tightening the enforcement.**

The Board advises you to obtain the required exemption before advertising massage therapy.

*"An exemption can be obtained by a chiropractor who owns a clinic if...."*



### *Rules from page 5*

#### **RULE 190-X-1-.05 Quorum.**

Five (5) members of the Board shall constitute a quorum. However, the board may appoint hearing panels consisting of no fewer than three (3) board members. The consumer member of the board may be a member of each hearing panel. The hearing panels are authorized to conduct hearings in the same manner as the full board is authorized to conduct hearings.

Effective: 1/6/87, amended 4/2/93, amended 8/96, amended 8/2003; amended 6/06

Authority: 34-24-144; 34-24-140 as amended 5/1985

#### **RULE 190-X-2-.01 Educational Requirements.**

(1) All Applicants. Each applicant for licensure prior to December 31, 2009 must have had literary training equaling as much as a regular high school graduate.

(2) All applicants must be a graduate of a chartered chiropractic school or college accredited by the council of chiropractic education which teaches only attendance courses and requires a minimum four-year standard college course.

(3) Each applicant for licensure who graduates from a chiropractic college after December 31, 2009, shall have a bachelor's degree from an accredited college or university and submit a certified copy of a transcript evidencing the referenced degree.

(4) Applicants Matriculating After October 1, 1975. Each applicant for licensure that matriculated in a chiropractic college on or after October 1, 1975, must have graduated from a chiropractic college accredited by or having status with the Commission of Accreditation of the Council on Chiropractic Education, or its successor.

(5) Student Applicants. Any person who is currently enrolled in a chiropractic college approved by the Board shall be permitted to make application to this Board and take the necessary examination during his / her final academic year of college. In the event a student applicant passes the Board, his / her license shall be issued after graduation and upon receipt of all supporting documents and fee.

Effective: 3/6/90, (3) amended 3/94; amended 6/06

Authority: 34-24-160; 34-24-144; 34-24-165

#### **RULE 190-X-2-.04 Application Required.**

(1) Application Form. Each applicant for licensure shall complete an application form prescribed by the Board and supplied by the executive secretary. Application forms must be typewritten, and all items on the form must be completed fully.

(2) Documentation. The documents indicated below must be received by the executive secretary before an application will be processed.

(a) The applicant must submit the following documents by

the examination deadline:

1. A signed wallet or passport size photograph attached to the application in the appropriate place.
2. Fee provided for in Rule 190-X-2-.02.

(b) The following must be submitted to the executive secretary directly from the respective institution, organization or state licensing agency:

1. A certified transcript of applicant's chiropractic college grades showing graduation from an approved chiropractic college.

2. A certified copy of his / her transcript of scores of at least parts one and two from the National Board of Chiropractic Examiners showing he / she has passed the examinations administered by that Board (see Rule 190-X-2-.05).

3. Complete verification(s) of licensure (out of state license holders only).

4. An up-to-date college transcript of grades together with a letter from the applicant's college certifying that he or she is currently in the final academic year of chiropractic education may be used in cases where the diploma has not yet been issued.

5. Beginning January 1, 2010, a certified transcript of the applicant's college grades showing graduation from an accredited college or university with a bachelor's degree.

(3) Notarization Required. Complete applications must be signed and notarized.

(4) Deadline for Application. Complete applications, including all documents and fees must be received by the executive secretary by the 25th of the month prior to the next examination except for reciprocity applications which must be received by the executive secretary the 15th of the month prior to the next examination.

Effective: 3/6/90, (2) (b) (5) amended 3/94, (2)(b) amended 9/96, (2)(a),(b)3, 5, (4) amended 1/02, amended (2)(b)(1)(2) 11/03; amended 6/06

Authority: 34-24-160; 34-24-144; 34-24-161

#### **RULE 190-X-2-.15 Licensure-by Reciprocity**

(1) The Board may license an applicant if the applicant is licensed in another state that, in the opinion of the board, has standards of practice or licensure equal to or stricter than the requirements imposed by this state subject to the following conditions:

(a) The applicant for licensure by reciprocity must possess a license in good standing in all state in which the applicant is licensed. At the time of the application, the applicant must have practiced chiropractic for at least five (5) years and for the preceding three (3) years the applicant must have been actively licensed and practicing chiropractic in the reciprocating state.

(b) The applicant must not be the subject of any pending complaint or investigation in any state or jurisdiction in which the applicant holds or has held a license. The applicant must provide all information, including any

*Rules from page 6*

information or documentation requested by the Board, in connection with any pending complaint or investigation for the Board's review. The pendency of any complaint or investigation may be considered by the Board as a reason for denying licensure by reciprocity.

(c) The applicant must not have been disciplined in any state in which he or she holds or has held a license resulting from conduct which would constitute a violation of any of the grounds set forth in Code of Alabama, (1975) Section 34-24-166.

(d) The applicant shall not have been convicted of a felony or misdemeanor involving moral turpitude. A plea of nolo contendere shall be considered a conviction.

(e) The applicant must be current with continuing education requirements of the other state.

(f) The applicant must not have been found guilty of any actions in any state which could have resulted in discipline pursuant to Code of Alabama § 34-24-166.

(g) The applicant must not have been convicted of a felony or a misdemeanor involving moral turpitude. A plea of nolo contendere shall be considered a conviction.

(h) The applicant who graduated Chiropractic College after December 31, 2009 must have a bachelor's degree.

(2) The applicant must complete all forms required by the Board including but not limited to an application for licensure by reciprocity and an application for licensure to practice chiropractic. In addition, as part of the application process, and in order for the application to be considered complete, it shall be the responsibility of the applicant to submit the following:

(a) All applicable fees.

(b) Certification from the Board in each state where the applicant is currently licensed or previously held a license that the applicant's license is currently in good standing or was during the time the applicant possessed such a license. This certification from the Board(s) shall also include a statement that the applicant is in compliance with the provisions of paragraph (1) (a)-(c) above.

(c) any and all available information pertaining to the examination taken by the applicant which resulted in licensure in the other state(s).

(d) a certified transcript of applicant's chiropractic college grades sent directly from the school.

(e) a certified transcript of any National Board examinations sent directly from NBCE.

(f) Each applicant for licensure who graduated Chiropractic College after December 31, 2009, shall submit a certified copy of the transcript evidencing a bachelor's degree from an accredited college or university sent directly from the college.

(g) An affidavit attesting to the applicant's compliance with all the provisions of this rule.

(3) In addition to the requirements listed above, the Board may as a requirement of the application process require the applicant to appear for a personal interview.

(4) The Board may consider as part of the application process whether the applicant has ever failed a licensure examination and the applicant shall be required to submit any documentation requested by the Board in connection with such failure.

(5) The Board may consider as part of the application process whether the applicant has ever been denied licensure in any state, regardless of the type of licensure. Upon request of the Board, the applicant shall submit any documentation in connection with such denial.

(6) Any applicant for licensure by reciprocity as a condition to the granting of such license must successfully pass an Alabama jurisprudence examination. Effective: 10/1/03; amended 6/06

Authority: 34-24-161; 34-24-140; 34-24-160

#### **RULE 190-X-4-.02 Complaint Investigation Procedure.**

(1) In the event a complaint is filed against a licensee or permit holder, or it is determined from other information that an investigation is necessary the procedure for investigation shall be as follows:

(a) The complaint or other information will be investigated by a committee.

(b) If the committee determines after its investigation that probable cause exists, the procedure outlined in Code of Alabama (1975) Section 34-24-120 et seq. shall be followed. In the event the committee determines that probable cause does not exist, no further action will be taken and the complaint will be considered closed.

Effective: 8/5/89 amended 9/92, (a)(b) amended 8/96, amended 6/2000, (b) amended 1/2002; amended 6/06

Authority: 34-24-167; 34-24-144; 34-24-165

#### **RULE 190-X-4-.06 Discipline.**

(1) Upon a finding that a licensee or permit holder has violated any enumerated provision of Code of Ala. 1975, 34-24-123, 34-24-161(e), or 34-24-166, or any rule adopted pursuant thereto, the Board may invoke disciplinary action as outlined in §34-24-166(c). Failure to comply with any final order of the board, including, but not limited to, an order of censure or probation, is cause for suspension or revocation of the license or permit.

(2) Fines. Upon finding that a licensee or permit holder has violated any enumerated provision of law governing the practice of chiropractic or any rule adopted pursuant thereto, the Board may impose the following schedule of fines for each such violation. The Board shall not renew the annual certificate of registration of any licensee or permit holder against whom an administrative fine has

Please see *Rules* on page 8

*Presidential Message from page 4*

during the law classes during the coming year.

Lastly (and for the last time, I hope), is the topic of the “law hours”. I have previously addressed this in this column (even listing the requirements of 12 other nearby states) and in person at the seminars. The majority of the states have some requirement relative to approved CE hours, and it is increasing every year, both in the number of states and the specificity of the hours. For example, Florida currently requires: 40 hours in 2 years with 2 hours in prevention of medical errors, 1 in risk mgmt., 2 in Fl. laws and rules. They have recently proposed the following changes in addition to the above: 6 hours in record keeping, documentation and coding, and 2 hours in ethics. You will have to sign in and out each time you enter or leave the classroom, and fines of up to \$5000 for not getting your hours on time. Whether you choose to believe me or not, you have it better in Alabama than you think.

Yours in Health, Carl Nelson

*Rules from page 7*

been assessed by the Board until the fine is paid in full.  
(a) The Board may impose a fine not to exceed \$2,000 for each violation of any of the following provisions of law governing the practice of chiropractic or any rule adopted pursuant thereto (Class A violations)

1. Section 34-24-166(b)(1);
2. Section 34-24-166(b)(2);
3. Section 34-24-166(b)(3);
4. Section 34-24-166(b)(4);
5. Section 34-24-166(b)(5);
6. Section 34-24-166(b)(6);
7. Section 34-24-166(b)(9);
8. Section 34-24-166(b)(10);
9. Section 34-24-166(b)(11); and
10. Section 34-24-166(b)(12);

(b) The Board may impose a fine not to exceed \$1,000 for each violation of any of the following provisions of law governing the practice of chiropractic or any rule adopted pursuant thereto (Class B violations):

1. Section 34-24-166(b)(7); and
2. Section 34-24-166(b)(8);

(c) The Board may impose a fine not to exceed \$500 for each violation of any of the following provisions of law governing the practice of chiropractic or any rule adopted pursuant thereto (Class C violations):

1. Section 34-24-166(b)(13);
2. Section 34-24-166(b)(14);
3. Section 34-24-166(b)(15); and
4. Section 34-24-166(b)(16)

(3) Additional Discipline. Upon finding the licensee has violated any enumerated provision of law governing the practice of chiropractic or any rule adopted pursuant thereto, the Board may impose the following additional penalties:

- (a) Revoke the license.

- (b) Suspend the license.

- (c) Enter a censure.

- (d) Place the license on probation fixing a period and terms best adapted to protect the public health and safety and to rehabilitate the licensee.

- (e) Impose restrictions on the scope of practice of the licensee.

- (f) Impose peer review.

- (g) Impose professional education requirements.

- (h) Order and direct a licensee to submit to a physical, mental or lab examination as outlined in §34-24-166.

- (4) Stay of Execution of Order. The Board may in its discretion, permanently or temporarily stay the execution of its order to revoke or suspend respondent's license.

- (5) Considerations. In determining whether disciplinary action should be invoked, or whether a fine should be imposed and in what amount, and whether execution of the order should be stayed, and upon what conditions, the Board shall consider all relevant factors, including, but not limited to, the following:

- (a) the severity of the offense;

- (b) the danger to the public;

- (c) the number of repetitions of offenses;

- (d) the length of time since the violation;

- (e) the number of complaints filed against the licensee;

- (f) the length of time the licensee has practiced;

- (g) the actual damage, physical or otherwise, to the patient;

- (h) the deterrent effect of the penalty imposed;

- (I) the effect of the penalty upon the licensee's livelihood;

- (l) any efforts of rehabilitation; and

- (k) any other mitigating or aggravating circumstances.

Effective: 8/5/89, amended 7/6/93, (a)(b)(c) amended 5/99, (a)(b)(c) amended 1/2001, amended 8/2003; amended 6/06

Authority: 34-24.144; 34-24-165



**RULE 190-X-4-.07 Costs.**

(1) Upon a finding that a licensee or permit holder has violated any enumerated provision of Code of Ala. 1975, 34-24-123, 34-24-161(e), 34-24-166, or any rule adopted pursuant thereto, the Board shall impose the following costs against any person whose license or permit is refused, revoked, or suspended, and / or against who any fine has been imposed.

(a) The Board may impose costs in the amount of up to \$8,000, in connection with any hearing held in connection with the refusal of a license pursuant to Code of Ala. 1975, 34-24-166(a).

(b) The Board shall impose costs for the actual amount incurred not to exceed \$8,000 for each violation of any of the provisions of law governing the practice of chiropractic or any rule adopted pursuant thereto.

Effective: 8/5/89, (1)(a)(b)(c)(d) amended 2/98, (1)(b)(c)(d) amended 6/98, (a)(b)amended 8/2003, amended 6/06.

Authority: 34-24-170; 34-24-144; 34-24-165; 34-24-166

**RULE 190-X-5-.05 Immoral or Unprofessional Conduct Prohibited.**

(1) The following conduct on the part of a licensee is prohibited:

Immoral,

Unprofessional.

(2) Immoral or unprofessional conduct is defined as that conduct which violates those standards of professional behavior which through professional experience have become established, by consensus of the opinion of the Board members, as reasonably necessary for the protection of the public interest.

Effective: 9/15/82, amended (2) 1/98, amended (1)(2) 10/98, amended 6/06

Authority: 34-24-166(2); 34-24-144; 34-24-165.

**RULE 190-X-5-.06 Solicitation.**

(1) Statement of Policy. It is the policy of the Board that solicitation by chiropractors and / or permit holders in this state should be regulated so as to effectuate the duty of the State of Alabama to protect the health, safety and welfare of its residents, while not abridging any rights guaranteed to such licensees or to the public by the Constitutions of the United States and the State of Alabama, as construed by the United States Supreme Court and the Alabama Supreme Court. The Board has a substantial interest in protecting the public from fraud, undue influence, intimidation, overreaching and other forms of vexatious conduct as well as protecting the tranquility and privacy of the home and of personal injury victims and their loved ones against intrusive, unsolicited contacts by licensees. The practices prohibited by this rule are hereby found and declared to constitute immoral or unprofessional conduct in violation of Code of Ala. 1975, 34-24-166(b)(2), and Rule 190-X-5-.05 and / or fraud in obtaining money or other thing of value in violation of Code of Ala. 1975, 34-24-166(b)(1).

(2) Certain Practices Prohibited.

(a). Direct in-person uninvited solicitation. A licensee or permit holder shall not by any direct, in-person, uninvited solicitation solicit an engagement to perform professional services. A licensee who has engaged in direct, in-person, uninvited solicitation shall not accept employment resulting from that solicitation, except that a licensee may accept employment from a close friend, relative, former patient (if the solicitation is germane to the former treatment), or one who the licensee reasonably believes to be a patient.

(b). Written communication. All written communications sent by or on behalf of a licensee shall conform to the advertising guidelines of Rule 190-X-5-.04 and Rule 190-X-5-.14.

(3) Definition. For the purpose of this rule, the term "direct, in-person, uninvited solicitation" shall be deemed and construed to mean any communication which directly or implicitly requests oral response from the recipient. Examples of such acts of uninvited solicitation include, but are not limited to, any uninvited in-person visits or conversations or telephone calls to a specific potential patient. However, such indirect forms of solicitation as giving speeches, conducting educational seminars, distributing professional literature by mail, except as prohibited above, or other forms of delivery that are not "in-person" and writing books and articles are not prohibited.

(4) Permissible Communication. Any form of invited communication to a potential client is permissible provided such communication conforms to the advertising guidelines of Rule 190-X-5-.04.

(5) Any current licensed doctor of chiropractic wishing to contract for or perform research that requires solicitation must obtain prior approval of same from the Board.

Effective: 3/6/90, (1) amended 9/99, (1)(2)(3)(5) amended 12/00, (2)(c) amended 1/2003, amended 8/06

Authority: 34-24-144; 34-24-165; 34-24-166(b)(1)(2).

## Rules from page 9

**RULE 190-X-5-.07 Trust Accounting Procedures For Prepayment Plans.**

(1) Statement of Policy. It is the finding and declaration of the Board that any licensee or permit holder who fails to preserve the identity of funds and property of a patient or who uses unearned fees received from a patient prior to rendering service engages in immoral or unprofessional conduct as defined in Rule 190-X-5-.05. It is the policy of the Board that money or other property entrusted to a chiropractic physician for a specific purpose, including advances for costs and expenses of examination or treatment, is to be held in trust and must be applied only to that purpose.

(2) Scope of Rule. The provisions of this rule apply to all trust funds received or disbursed by chiropractors in the course of their professional practice. "Trust funds" is defined as unearned fees in the form of cash or property other than cash, which are received by a chiropractor prior to the chiropractor rendering his services or his selling of goods and appliances.

(3) Minimum Accounting Procedures. The minimum trust accounting records which shall be maintained by all chiropractors practicing in Alabama who receive or disburse trust money in the course of their professional practice are:

(a) A file or ledger containing an accounting for each person from whom or for whom trust money has been received.

(b) A signed explanation of what services will be provided in exchange for the trust money.

(4) Return of Trust Funds. Every chiropractic physician shall promptly pay or deliver to the patient, as requested by the patient, the funds, securities or other properties in the possession of the physician which the patient is entitled to receive. The amount to be returned can be calculated either by:

(a) Prorated by time.

(b) Fees collected minus fees for services performed.

(c) A statement signed by the patient that describes which option will be used to calculate a refund.

(5) Failure to Comply with Rule. Any person who fails to comply with the provisions of this rule shall be deemed to be engaging in immoral or unprofessional conduct in violation of Code of Ala. 1975, 34-24-166(2)(3).

(6) This rule does not preclude the retention of money or other property upon which the chiropractic physician has a valid lien for services and does not preclude the payment of agreed fees from the trust fund for examinations or treatments as examinations and treatments are provided. Controversies as to the amount of the fees are not grounds for disciplinary proceedings under this rule unless the amount demanded is clearly excessive or extortionate or the demand is fraudulent.

Effective: 9/18/82, amended 1/97, amended 6/97, amended 11/97, amended 6/06

Authority: 34-24-144; 34-24-165; 34-24-166(2)

**RULE 190-X-5-.08 Exploitation of Patients For Financial Gain.**

(1) Statement of Policy. The overutilization of chiropractic services or practice by exercising influence on a patient in such a manner as to exploit the patient or a third party payor for the financial gain of a licensee or a third party is hereby found and declared to constitute immoral or unprofessional conduct in violation of Code of Ala. 1975, 34-24-166(2).

(2) Definition of Overutilization. Generally. Overutilization of chiropractic services or practice is defined as services or practices rendered, or goods or appliances sold by a chiropractic physician to a patient(s) for financial gain of the chiropractic physician or a third party which are excessive in quality or quantity to the justified needs of the patient or are excessive in price.

(3) Overutilization Specifically. Overutilization occurs when:

(a) The physician's written chiropractic records do not justify or substantiate the quantity or number of chiropractic services, or practices rendered, or goods or appliances sold by a chiropractic physician to a patient;

(b) A claim or claims for chiropractic services, practices, goods or appliances is submitted to that patient or third party payor which represents multiple charges for one specific chiropractic diagnostic service or treatment practice, good or appliance.

(c) A charge or claim for chiropractic services, practices, goods or appliances exceeds the usual and customary charges for such services, practices, goods or appliances to the extent that the charge or claim is unconscionable.

(d) A charge or claim is submitted to the patient or to a third party payor for services, practices, goods or appliances which were not rendered or supplied.

(e) A chiropractic doctor renders any chiropractic services, practices, goods or appliances for which a fee may be charge after such time as a patient has requested but has not been provided with a written itemized statement of any chiropractic services, practices, goods or appliances to be rendered during a particular office visit, and the corresponding fees that will be charges for such services.

(4) A chiropractor shall not engage in the following:

(a) Routinely waive co payments or deductibles for the purpose of financial gain; or

(b) Waive co payments or deductibles for the purpose of enticing or encouraging individuals to become patients.

Effective: 3/6/90; (4) 11/2005, amended 6/06

Authority: 34-24-144; 34-24-165; 34-24-166(2)

#### **RULE 190-X-5-.09 Chiropractic Records Required; Release of Records.**

(1) The Board finds and declares that the maintenance of an adequate record in the treatment of a patient is an essential component of the standard of care. Chiropractors should maintain legible well documented records reflecting the history, findings, diagnosis and course of treatment in the care of a patient. Patient records should be maintained by the treating chiropractor. Any licensee or permit holder who fails to keep for a minimum of five (5) years all written chiropractic records which justify the particular course of treatment of the patient engages in immoral or unprofessional conduct as defined in Rule 190-X-5-.05.

(2) The Board finds and declares that, while physical chiropractic records may rightfully be considered the property of the licensee or the chiropractic clinic facility where the licensee may be employed, the chiropractic patient is just as rightfully entitled to the information contained in any chiropractic records related to his or her care for any legitimate purposes, which such legitimate purposes certainly Includes the obtaining of second chiropractic or medical opinions.

(a) Upon request of a patient or authorized agent of a patient, licensees are required to, at a minimum, immediately turn over to a patient or his or her authorized agent legible and accurate copies of any pertinent chiropractic records of the patient when requested to do so by the patient or his or her authorized agent for a legitimate purpose which is stated in writing and signed by the patient. The reasonable costs of reproducing copies of written or typed documents, or reports shall not be more than one dollar (\$1) for each page of the first 25 pages, not more than 50 cents (\$.50) for each page in excess of 25 pages, and a search fee of five dollars (\$5). If the records are mailed to the person making the request, reasonable costs shall include the actual costs of mailing. A person may also charge the actual cost of reproducing X-rays and other special chiropractic records.

(b) The release of chiropractic records hereunder may not be made contingent upon payment of any other fee or charge owed by the patient. Failure to provide records to patient upon request in accordance with this rule shall constitute immoral, or unprofessional conduct as defined in Rule 190-X-5-.05.

(c) The provision of this rule shall not apply to records subpoenaed by the State Board of Chiropractic Examiners.

(3) Transfer or Disposal of Records. When a licensee retires, terminates employment or otherwise leaves a chiropractic practice, the licensee is responsible for ensuring that active patients receive reasonable notification and are given the opportunity to arrange for the transfer of their patient records. A licensee or the chiropractic clinic which employs the licensee should not withhold information from a departing chiropractor which is necessary for the notification of patients. A licensee or the estate of a deceased chiropractor transferring patient records in connection with the sale of a practice should notify the active patients that the records are being transferred and should provide the patient with information sufficient to secure the transfer of the patient record.

Effective: 10/1/82, amended 3/22/84, 7/6/93, (1)(3) amended 6/98, (2)(a)(b)(c) amended 8/99, amended 6/06

*Please mark these  
important dates on  
your calendar.*



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ALABAMA STATE BOARD OF  
CHIROPRACTIC EXAMINERS  
102 CHILTON PLACE  
CLANTON, AL 35045

## **MEETING DATES**

**October 27 & 28, 2006** Board meetings and hearings at the Clanton Board office.

**December 1 & 2, 2006** Board meetings and hearings at the Clanton Board office.

**January 12 & 13, 2007** Board meetings at the Clanton Board office.

*Please visit the Secretary of State website for exact meeting information.*

## ***New Board Member***

In the 2006 legislative session a law change was made adding an additional seat to the Board. The new member will be an African American with the same qualifications as the other licensed Board members. The new member will be elected by all active licensees in Alabama.

The ballots for this new seat as well as the ballots for Districts 5 and 6 will go out in late November and must be returned within 14 days.

## **About the Board**

Carl E. Nelson, DC, President, Member District 2  
Gilles X. Beaumont, DC, Vice – President, Member District 1  
Jerry L. Schreiner, DC Secretary / Treasurer, Member District 7  
Paula D. Gilliam, DC, Preceptor Director, Member District 5  
Ronald F. Ivie, DC, Member District 6  
Merritt G. Lett, DC, Member District 4  
Brian Wells, DC, Member District 3  
Jeanette Greene, Consumer Member  
James S. Ward, Esquire Board Attorney

<p><b>BULK RATE PERMIT NO. 14 CLANTON</b></p>
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